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10-CV-00230-VRDCT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PACIFIC BIOSCIENCE
LABORATORIES, INC.,

Plaintiff,

v.

NUTRA LUXE MD, LCC, et al.,

Defendants.

CASE NO. C10-0230JLR

VERDICT FORM

We, the jury, unanimously find as follows:

PATENT INFRINGEMENT

1. Do you find that Plaintiff Pacific Biosciences Laboratories (“PBL”) has proven by a preponderance of the evidence that Defendants Nutra Luxe MD, LLC and Nutra Botanical MD, Inc. (collectively, “Nutra”) infringed Claim 31, 32, 34, or 38 of the United States Patent No. 7,320,691 (“the ‘691 Patent”)?

ANSWER: Yes (Write “yes” or “no”)

1 (DIRECTION: If you answer “no” to Question 1, skip Questions 2-5 and go onto
2 Question 6.)

3 2. Do you find that PBL has proven by clear and convincing evidence that
4 Nutra willfully infringed Claim 31, 32, 34, or 38 of the ’691 Patent?

5 ANSWER: Yes (Write “yes” or “no”)

6 3. Do you find that PBL has proven by a preponderance of the evidence that it
7 is entitled to lost profits?

8 ANSWER: Yes (Write “yes” or “no”)

9 (DIRECTION: If you answer “no” to Question 3, skip Question 4 and go onto
10 Question 5.)

11 4. What do you find is the amount of PBL’s lost profits?

12 ANSWER: \$ 9.1 million.

13 5. For all infringing sales for which PBL has not proved it is entitled to lost
14 profits, what do you find is the amount of reasonable royalty to which PBL is entitled?

15 ANSWER: \$ 296,000.

16 TRADE DRESS INFRINGEMENT

17 6. Do you find that PBL has proven by a preponderance of the evidence that
18 the following products of Nutra infringed PBL’s Clarisonic System trade dress?

19 Nutra Sonic Professional. ANSWER: Yes (Write “yes” or “no”)

20 Nutra Sonic Essential. ANSWER: Yes (Write “yes” or “no”)

21 Nutra Sonic Companion. ANSWER: Yes (Write “yes” or “no”)

22 Nutra Sonic Bella. ANSWER: Yes (Write “yes” or “no”)

1 (DIRECTION: If you answer “no” to all products of Question 6, skip Questions
2 7-9 and go onto Question 10.)

3 7. What do you find is the amount of PBL’s actual damages with respect to its
4 claim for trade dress infringement?

5 ANSWER: \$ 760,000.

6 8. What do you find is the amount of profits earned by Nutra that are
7 attributable to Nutra’s trade dress infringement?

8 ANSWER: \$ 682,000.

9 9. Do you find that PBL has proven by clear and convincing evidence that
10 Nutra intentionally infringed PBL’s Clarisonic System trade dress?

11 ANSWER: Yes. (Write “yes” or “no”)

FALSE ADVERTISING

13 10. Do you find that PBL has proven by a preponderance of the evidence that
14 Nutra is liable for false advertising based on the following statements?

15 Comparative Clinical Statement.

16 ANSWER: Yes (Write “yes” or “no”)

17 Faster Oscillation Statement.

18 ANSWER: Yes (Write “yes” or “no”)

19 Larger Brush Head Statement.

20 ANSWER: Yes (Write “yes” or “no”)

21 Better Product Statement.

22 ANSWER: Yes (Write “yes” or “no”)

1 #1 Dermatologist Recommended Statement.

2 ANSWER: No (Write "yes" or "no")

3 4 Speeds Statement.

4 ANSWER: Yes (Write "yes" or "no")

5 400 Oscillations Statement.

6 ANSWER: No (Write "yes" or "no")

7 (DIRECTION: If you answer "no" to all statements of Question 10, skip

8 Questions 11-13 and go onto Question 14.)

9 11. What do you find is the amount of PBL's damages with respect to its claim
10 for false advertising?

11 ANSWER: \$ 580,000.

12 12. What do you find is the amount of profits earned by Nutra Luxe that are
13 attributable to Nutra Luxe's false advertising statements?

14 ANSWER: \$ 197,000.

15 13. Do you find that PBL has proven by clear and convincing evidence that
16 Nutra Luxe intentionally made a false advertising statement knowing it was false?

17 ANSWER: Yes (Write "yes" or "no")

18 **VIOLATION OF WASHINGTON STATE CONSUMER PROTECTION ACT**

19 14. Do you find that PBL has proven by a preponderance of the evidence that
20 Nutra Luxe violated the Washington State Consumer Protection Act?

21 ANSWER: No (Write "yes" or "no")

1 (DIRECTION: If you answer "no" to Question 14, skip the remaining questions
2 and sign the Verdict Form. If your answer to Question 14 is "yes," then answer the
3 remaining questions.)

4 15. What do you find is the amount of PBL's damages caused by Nutra Luxe's
5 violation of the Washington State Consumer Protection Act?

6 ANSWER: \$ 0.

7 Dated this 12 day of September, 2012.

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10 Presiding Juror

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